IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.172 of 2005.

Date of decision: October 25, 2007.

Uma Devi. ……. Appellant.

Vs.

State of Himachal Pradesh. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No .

For the Appellant : Ms. Archana Dutt, Advocate.

For the respondent: Mr. S.D. Vasudeva, Addl. Advocate General with Mr. D.S. Nainta, Dy. Advocate General.

Surjit Singh, J (oral):

Heard and gone through the record.

Appellant has appealed against the judgment of the Special Judge (Presiding Officer, Fast Track Court) whereby she has been convicted of an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, for possessing 2.500 Kilo grams of **Charas**.

Prosecution version, as per record, is that on 27th January, 2004, at about 1.45 p.m., PW13 Khub Ram, Inspector, Station House Officer, Police Station, Chamba was on patrol duty, in the company of some constables and head constables, at a place called 'Bharmour Chowk', in connection with routine checking of vehicles. Appellant appeared from Hardaspura side and on seeing

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Whether reporters of local Papers may be allowed to see the judgment? .

the police she turned back and tried to run away. This aroused the suspicion of PW13 Khub Ram. He and the police men accompanying him over-powered the appellant. She was found to be carrying something wrapped in a parrat coloured dupatta. On search, it was found that what was wrapped in the Dupatta was a plastic bag, containing Charas in the form of sticks and balls. The stuff was weighed. It was found to be 2.500 kilo grams. Two samples each weighing 25 grams, were separated. Two samples and the bulk stuff were then made into three separate parcels and the same were sealed with a seal that produced the impression of English letter `**T'**. Search and seizure memo was prepared. A written report was drawn and sent to the Police Station, for formal registration of the case. The three sealed parcels were deposited with PW11 ASI Prem Chand, who resealed the same with a seal that produced the impression of English letter **'R'**. He prepared the memo of resealing. The case property was then deposited with Moharar Head Constable, namely PW8 HC Rajinder Singh, who sent one of the two sample parcels to the Chemical Examiner, through Constable Shiv Kumar (PW9), on 29.1.2004, alongwith NCB forms. The Chemical Examiner reported that the sample contained resin to the extent of 26.11 per cent and Beams Alkaline test was also found to be positive and therefore, the sample stuff had contents of Charas. On receipt of the report of the Chemical Examiner, appellant was sent up for trial. Trial court has convicted the appellant and sentenced her to undergo rigorous imprisonment for 10 year and to pay fine of Rs.1,00,000/-, in default of payment of fine to undergo simple imprisonment for a further period of one year.

It has been submitted by the learned counsel for the appellant that the evidence led by the prosecution to link the report

Ext.PW13/A of the Chemical Examiner with the stuff allegedly recovered from the appellant is of a doubtful nature and therefore, the conviction is liable to be set-aside. Her contention is that even though the Chemical Examiner has certified that the seal impressions on the sample parcels received by him tallied with the specimen seal impressions sent to him separately, the evidence on record shows that no specimen impressions of the seal were sent to the Chemical Examiner and that in fact specimen impression of only one seal, that is the seal with which the parcels were sealed by PW13 Khub Ram had been affixed on one piece of cloth and that piece of cloth is on the record of the case, as Ext.PD, hence the question of specimen impressions of the seal, being available with the Chemical Examiner for comparison with the seal impression on the sample parcel could not arise.

We have been taken through the relevant evidence. PW13 Khub Ram has testified that he took the specimen seal impressions on a piece of cloth Ext.PD. This piece of cloth Ext.PD bears three specimen seal impressions which read like letter '**T'** of English alphabet. It also bears three specimen impressions of another seal, which read like letter **'R'** of English alphabet. PW11 ASI Prem Chand, who resealed the three parcels, i.e. two containing the samples and one containing bulk, with his own seal that produced the impression of English letter **'R'**, has not testified that he had affixed the specimen impressions of that seal on Ext.PD. Not only this, he does not say that he had taken specimen impressions of the said seal. This witness prepared memo of resealing Ext.PW10/A. In the said memo also there is no mention of specimen impressions of the seal having been affixed by the witness either on Ext.PD or any other piece of cloth or the NCB form. As a matter of fact, as already noticed, there are no

specimen impressions of the seal on the NCB forms. In any case, when specimen impressions of the seal had been obtained only on one piece of cloth i.e. Ext.PD, the certificate in the form of stamp impression on the report of the Chemical Examiner that the seal impressions on the sample parcel tallied with the specimen seal impressions received separately cannot be said to be correct, because when according to the testimony of PW13 Khub Ram, specimen impressions of the seal had been obtained only on one piece of cloth and that piece of cloth is available on the record of the case, meaning thereby it was never sent to the Chemical Examiner, it cannot be said that any specimen impressions of the seal were available with the Chemical Examiner for comparison with the seal impressions of the sample parcel at the time when the chemical analysis was done. Thus report cannot be said to have been proved, beyond reasonable doubt to pertain to the sample of the stuff allegedly recovered from the appellant.

The result of the above discussion is that the stuff allegedly recovered from the appellant cannot be said to be Charas. Hence, the appeal is accepted. Conviction and sentence of the appellant, as ordered by the trial court, vide its judgment dated 16th /17th March,2005 are set-aside and she is acquitted. She being in jail, serving out the sentence that has been set-aside, hereinabove, is ordered to be released forthwith, in case her custody is not required in any other case.

The matter is disposed of accordingly.

(Surjit Singh)
Judge.

October 25, 2007.
(PDS)

(Surinder Singh)
Judge.